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C O N F I D E N T I A L SECTION 01 OF 02 PRETORIA 003726

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SUBJECT: LOCAL REPS FOR U.S. ICT COMPANIES ENDORSE NEW
CHARTER TEXT ON EQUITY REQUIREMENTS

REF: A. PRETORIA 2651

[1](#)B. PRETORIA 2164

[1](#)C. PRETORIA 2092

Classified By: Econ MC Jeff Hartley. Reasons 1.5 (b,d).

[1](#)1. (SBU) SUMMARY. Representatives for U.S. information and communication technology (ICT) companies operating in South Africa endorsed new charter language on equity in an August 11 meeting. The new language outlines conditions that must be met before companies may implement alternative equity models or be exempted from the ICT Charter requirement to sell equity to Black South African firms. Their endorsement contradicts a two-month negotiating strategy and previous mandate not to support the proposed language. The officials are quick to point out that they have endorsed only the equity language and did so in the spirit of moving the negotiations forward. They say that only corporate principals can give final approval to the 4th Draft ICT Charter to be released on August 23. Legal experts consulting with the American Chamber of Commerce in South Africa (AmCham) fear U.S. companies may have undermined their position and forfeited significant leverage in their requests for greater clarity in the ICT Empowerment Charter. END SUMMARY.

[1](#)2. (U) In an unexpected move, a handful of local representatives for U.S. businesses operating in South Africa informed their negotiating spokesperson, AmCham Director Luanne Grant, that they would endorse new ICT charter language about the sale of equity to Black South African firms. The development occurred August 11 during a late-night meeting between AmCham, the ICT Charter Working Group and officials from South African and U.S. ICT businesses. This development comes after eight weeks of negotiations between the Group of 10 ended in a stalemate. The Group of 10 consists of AmCham and representatives from U.S. ICT companies on one side and the ICT Working Group and Black South African ICT businesses and associations on the other side.

[1](#)3. (SBU) The announcement came as a surprise to many U.S. business reps who, for months, had been asking the Working Group to provide greater clarity in the ICT Charter on key issues. In particular, U.S. ICT companies sought clarification on alternative models to selling equity, what constitutes fronting, how would the ICT BEE Council be formed and what would its mandate be, and the implementation of a balanced scorecard approach versus required minimum scoring. By the end of July, the Group of 10 was no closer to an accommodation than when negotiations began in early June. On July 29, ICT Working Group Chairperson Dali Mpofu emailed the new charter language on equity to AmCham Executive Director Luanne Grant for distribution to American ICT companies in South Africa. Mpofu asserted that sufficient time had been spent discussing the equity issue and that August 2 would be the last meeting of the Group of 10.

[1](#)4. (C) Mpofu proposed that ten paragraphs be added to the ICT Charter outlining how companies that are unable to sell equity to meet black economic empowerment (BEE) objectives could propose alternative equity models. If the legal, technological or policy barriers of a firm do not allow for any type of alternative equity model, companies can be issued a Certificate of Permitted Non-Compliance exempting the firm from the equity ownership requirement. Companies receiving a Certificate of Non-Compliance would score zero in the equity component and add up remaining points from their empowerment criteria to achieve either a bronze, silver or gold empowerment rating. Upon review, U.S. business officials agreed that the language still failed to address the balanced scorecard concept where overscoring in one component would compensate for underscoring in another. They also said that the language did not provide sufficient clarity on what barriers would be considered legitimate and which of the proposed alternative equity models might be accepted. Lastly, the officials were concerned that the proposed

process would be left to a yet-to-be-created ICT BEE Council without clarifying how the ICT BEE Council would be created, who would serve on it and how it would review equity cases. As a result, U.S. ICT business reps agreed not to endorse the proposed text on equity at the August 2 meeting.

15. (C) Mpofu then contacted IBM Country GM Mark Harris, spokesperson for the U.S. ICT companies, on August 6 and again on August 9. According to Harris, Mpofu offered to draft a "Letter of Comfort" to provide greater clarity on overscoring and the scorecard. Mpofu also said that he would facilitate the creation of an independent legal entity to evaluate the legitimacy of barriers identified by the American companies and whether proposed alternative equity models would be acceptable. On the issue of the Council, Mpofu said that it was beyond his mandate and, as such, he was unable to answer questions on the composition and scope of the ICT BEE Council.

16. (C) In a meeting attended by Econoff on August 11, multinationals discussed the Working Group's proposed text on equity. In consultation with ICT attorneys, AmCham concluded that a Letter of Comfort would not be legally binding and, therefore, would not provide the assurances that AmCham and U.S. businesses sought from the ICT Charter. U.S. business officials joined AmCham at a 6 p.m. meeting with the Working Group. AmCham presented the view that a Letter of Comfort did not provide sufficient legal assurances and, furthermore, only after corporate legal departments had reviewed the complete Charter would the principals be prepared to determine whether or not to sign the Charter. After hours of fruitless discussion, Microsoft Country GM Gordon Frazer broke ranks with the American companies and said that, in his opinion, local general managers of U.S. ICT companies had the authority to decide whether or not to endorse the proposed Charter language on equity. Frazer continued that "in the spirit of moving the process forward" he would endorse the language. According to Grant, all but one of the remaining nine multinational representatives appeared satisfied with Frazer's suggestion, calling on Grant to endorse the proposed language on behalf of the multinationals. Despite a previous survey where 22 of 25 multinationals voted not to accept the proposed language, Grant yielded to the majority at hand and agreed to a signing ceremony at a Press Conference scheduled for the following day.

17. (C) Representatives from the U.S. companies are quick to point out that they have endorsed only the specific text on equity and did so in the spirit of moving the negotiations forward. They say that only corporate principals can give final approval to the 4th Draft ICT Charter to be released to the public on August 23. They say that without clarity on the key issues, corporate principals are not likely to sign the Charter.

18. (C) Legal experts consulting with AmCham fear that the American companies may have undermined their position and forfeited significant leverage in the run up to a meeting of President Mbeki's International IT Advisory Council. Harris, however, said that despite strong pressure to prevent the inclusion of equity and the ICT Charter on the agenda, they would be discussed at the meeting. In addition, AmCham is following up on an offer made by Minister of Communications Ivy Matsepe-Casaburri at the August 12 press conference to meet with the U.S. businesses to resolve their remaining concerns.

19. (U) The full text of the language on equity endorsed by AmCham on behalf of the American ICT companies was released to journalists at the August 12 press conference and the text will be faxed to AF/S.

FRAZER